

grounds, *inter alia*, that he is now undergoing treatment at the General Hospital Kuala Lumpur and that the learned President erred in law in not seeking medical evidence before imposing imprisonment sentence. The reason for sending him to prison is contained in the last paragraph of the learned President's grounds of judgment which states:

"It is apparent that the accused has been taking drugs ever since 1963. The conviction has not in any way deterred the accused from committing the offence. It is, in his own interest that I sentence him to 6 months imprisonment as a fine has not done him any good. The imprisonment term should force him to separate from the drug and I am of the opinion that the 6 months imprisonment will stop him from taking the drug in the future. As such I think a sentence of 6 months on each of the charges to run concurrently is just and fair in the circumstances."

It is therefore obvious that imprisonment was imposed more in the interest of the appellant because the learned President thought that by doing so the appellant's addiction to chandu could be cured, having regard to the fact that the imposition of fine in the previous conviction did not appear to do him any good.

In assessing sentence involving drugs, a distinction should be made between possession of such drugs by addicts and possession by pushers or carriers. Provided the quantity involved is comparatively small, as in the present case, consideration should also be given whether the drug concerned is chandu or it is the more dangerous type like morphine and cannabis (ganja). The appellant in this case is married with eight children, four of whom are still schooling. He is the sole breadwinner of the family and since his present conviction he has undergone medical treatment in Kuala Lumpur General Hospital for purpose of curing himself from his addiction to opium and is apparently now cured. In my view, there is no doubt that the appellant was an opium addict and this must also be the finding of the learned President when she heard the case as apparent in her grounds of judgment. Under the circumstances, and having regard to the small quantity of chandu involved, I hold that the sentence imposed is manifestly excessive as it serves no useful purpose. The very object of sending him to prison has been achieved and, as such, he should be given a last chance. In cases of this nature, public interest is best served if the addict is given more than one chance to get off the hook, and before sending an addict to prison for the purpose of curing him, it is advisable that medical opinion be sought to enable the court to impose an adequate sentence.

This appeal is accordingly allowed and the sentence of imprisonment is set aside and instead I impose a fine of \$200 in default two months imprisonment on the first charge and \$300 in default three months imprisonment on the second charge.

Appeal allowed.

Solicitors: *Adlan & Haji Suhaimi.*

PUBLIC PROSECUTOR v. KASMIN BIN SOEB

[A.Cr.J. (Mohamed Azmi J.) May 10, 1974]
[Kuala Lumpur — Selangor Criminal Appeal
No. 121 of 1973]

Penal Code s. 411 — Stolen property — Dishonestly retaining stolen property — Presumption — Evidence Act, s. 114(a).

A This was an appeal against the order of a magistrate acquitting the accused at the close of the prosecution case in respect of the alternative charge under section 411 of the Penal Code wherein he was alleged to have dishonestly retained stolen property to wit, one Honda generator, valued at \$300, knowing or having reason to believe the same to be stolen property. The only evidence adduced connecting the accused with the crime was the fact that about three days after the property was stolen, he led the police to the place where the property was recovered.

B **Held:** (1) the mere evidence of leading the police to a spot, even if hidden, falls short of proving retention; there was no evidence of possession to raise the presumption under section 114(a) of the Evidence Act;

(2) evidence that an accused person has pointed out objects or places to the police was of little value and was often prejudicial to the accused unless the information which led to the discovery was disclosed at the same time.

C CRIMINAL APPEAL.

Lamin bin Haji Mohamed Yunus (Deputy Public Prosecutor) for the appellant.

Radzi bin Tan Sri Sheikh Ahmad for the respondent.

Mohamed Azmi J. (delivering oral judgment):

D This is an appeal against the order of the Magistrate at Klang in acquitting the accused at the close of the prosecution case in respect of the alternative charge under section 411 of the Penal Code wherein he was alleged to have dishonestly retained stolen property to wit, one Honda Generator, valued at \$300, knowing or having reason to believe the same to be stolen property.

E The only evidence adduced connecting the accused with the crime was the fact that about three days after the property was stolen, he led the police to the place where the property was recovered. Whatever information the accused might have given to the police which led to the discovery was not adduced in evidence. That being the case, I agree with the learned magistrate,

F "that the mere evidence of leading the police to a spot, even if hidden, falls short of proving retention" There was no evidence of possession to raise the presumption under section 114(a) of the Evidence Act. As stated by the learned magistrate in his grounds of judgment, "what the prosecution managed to establish is that he had knowledge of the generator's whereabouts".

G The fact that the generator was found in a sack in an undergrowth about 10 chains from the main road might well give rise to suspicion of his complicity in the crime, but suspicion can never be substitution for proof. Further, evidence that an accused person has pointed out objects or places to the police is of little value and is often prejudicial to the accused unless the information which led to the discovery is disclosed at the same time.

H There were kampong houses near the place where the generator was recovered. As far as leading the police to the place of discovery was concerned, there were at least two inferences that could be drawn in the absence of information given by the accused. Either the accused himself had hidden the stolen property there or he had come to know of its whereabouts through a third person. In a criminal case, the inference favourable to the accused should be drawn. Under the circumstances, the appeal is dismissed and the order of discharge and acquittal be affirmed.

Appeal dismissed.

Solicitors: *Radzi Sheikh Ahmad & Co.*